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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,404	02/12/2002	Rudolf Gartner	22750/525	7026
26646	7590	01/11/2006	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/074,404	<b>Applicant(s)</b> GARTNER ET AL.	
	<b>Examiner</b> Cheryl Juska	<b>Art Unit</b> 1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed October 7, 2005, has been entered. Claim 11 has been amended as requested. The pending claims are 11-33 with claims 1-10 being withdrawn as non-elected.
2. Said amendment is sufficient to withdraw the 112 rejections set forth in sections 6, 7, and 11 of the last Office Action. Additionally, said amendment is sufficient to withdraw the 103 art rejections set forth in section 13 of the last Office Action. Specifically, applicant has amended the scope of the claims outside the teachings of the cited prior art.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 11-33 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claims 11-33 stand rejected for the use of the term "thermosetting" as set forth in section 8 of the last Office Action. Applicant traverses the rejection by noting the specification, page 5, lines 19-28, which discusses a thermosetting process of calendaring with an embossing roller a

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thermoset sheet. However, this recitation of the specification support the examiner's position in that the so-called "thermoset sheet" is made of polyester, which is not a thermosetting polymer, but rather a thermoplastic polymer. In fact, if said sheet was truly thermosetting, one would not be able to properly emboss the sheet with a heated calender roller. For the purposes of examination, the "thermosetting" limitation is met by any application of heat to the nonwoven.

6. Claims 21-24, 26, 27, 30, and 31 stand rejected for the use of the modulus phrase as set forth in section 9 of the last Office Action. Applicant asserts the phrase is definite and that one skilled in the art would understand the customary modulus values are specified in two dimensions (Amendment, page 7, 3<sup>rd</sup> paragraph). This argument is found unpersuasive since lawyers' arguments unsupported by factual evidence are insufficient. Applicant has not submitted sufficient evidence to establish the modulus values are customary in the art. As such, said rejection is maintained.

7. Claim 11 is indefinite for the use of the phrase "a method of manufacturing a spunbonded nonwoven" and then employing a spunbonded nonwoven as the starting material. In other words, the final product is the same as the starting material.

8. Claim 21 is rejected because it is unclear if the recitation of "spunbonded nonwoven" refers to the final product or the starting material. For the purposes of examination, the recitation is interpreted as the final product. Claims 23, 25, 26, 28, 30, 32, and 33 are similarly rejected.

9. Claims 22, 24, 27, and 31 are indefinite for limiting the fibers or filaments to a titer of 3-12 dtex, when claim 11 already limits said fibers or filaments to having a titer of 1-5 dtex.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,879,170 issued to Radwanski et al.

Radwanski discloses a hydroentangled nonwoven web material (abstract). said nonwoven may comprise a spunbond web of continuous filaments, such as polypropylene or polyethylene (abstract, col. 5, line 54-col. 6, line 21, and col. 12, lines 10-15). Said spunbond web may be a thermoplastic polypropylene spunbond fabric having an average denier per filament of 2.3 (about 2.5 dtex) (col. 15, lines 1-5). After hydroentangling the nonwoven, it may be stretched in at least one direction to elongate it (col. 12, lines 30-47). Additionally, the hydroentangled nonwoven may be post-treated at a bonding station, including thermal bonding, and dried (col. 14, lines 42-62). Since the drying step includes application of heat, the “thermosetting” limitation of the claim is met.

Thus, Radwanski teaches the invention of claim 11. Claim 13 is also anticipated because the needling step is not a positive requirement of the claims, but rather is an optional step. As such, the stretching after needling is not given patentable weight.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,879,170 issued to Radwanski et al. in view of US 5,587,225 issued to Griesbach et al.

Radwanski teaches the hydroentangled nonwoven may be thermally bonded, but fails to describe specifics of said bonding. Hence, one must look to the prior art for said specifics. Thermal point bonding with calender rolls having embossed points thereon is well known in the art. For example, Griesbach teaches a similar hydroentangled nonwoven which is point bonded after hydroentanglement and drying (col. 6, lines 14-54). Said point bonding employs heated and patterned or embossed bonding rollers (col. 6, lines 44-54). The patterns may include various shapes, such as circles, diamonds, squares, and the like or linear patterns (col. 7, lines 33-37). The bond area is about 10-50%, preferably about 20-35% (col. 7, lines 29-33). Thus, it would have been readily obvious to one skilled in the art to point bond the Radwanski nonwoven according to the specifics of the Griesbach reference, since Radwanski teaches said point bonding is desirable but fails to teach said specifics. Therefore, claims 14, 15, and 18-20 are rejected as being obvious over the cited prior art.

Regarding claims 16 and 17, said prior art fails to explicitly teach the claimed surface roughness of the rollers. However, it would have been obvious to one skilled in the art to employ the claimed surface roughness, since it has been held that where the general conditions of

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a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, claims 16 and 17 are also rejected.

14. Claims 21-28 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,879,170 issued to Radwanski et al.

Radwanski fails to explicitly teach the claimed basis weight and density of the nonwoven, the claimed modulus value, or that the nonwoven is polyester. However, these limitations are descriptive of the final product produced from the claimed method. Since applicant is claiming the method of making a nonwoven and not the nonwoven itself, said limitations are not given patentable weight at this time. It has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure. *Ex parte Pfeiffer* 135 USPQ 31. The present method is not affected by the claimed fabric basis weight, density or polymer type. Additionally, the resulting modulus property does not affect the claimed method. In the event said limitations are given patentable weight the following arguments are made.

While Radwanski teaches the spunbond fabric may be polypropylene, the reference fails to explicitly a polyester spunbond fabric. However, it would have been readily obvious to one skilled in the art to substitute polyester for the polyolefins disclosed by Radwanski since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Polyester is well known as suitable for spunbond nonwoven fabrics.

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Regarding the claimed basis weight and density, it would have been obvious to one skilled in the art to employ the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to the claimed modulus values, it is argued that the product of Radwanski meets the chemical and structural limitations of the present claims. As such, said product must possess the same physical properties. Like materials cannot have mutually exclusive properties. Therefore, claims 21-28 and 30-33 are also rejected.

15. Claims 12 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,879,170 issued to Radwanski et al.

Radwanski fails to explicitly teach the presently claimed oil finishing agent. However, said finishing agents or lubricants are well known in the textile art as a means to facilitate handling and processing of fibers or filaments. Applicant is hereby given Official Notice of this fact. The examiner notes that the facts asserted to be common and well-known are capable of instant and unquestionable demonstration as being well-known. To adequately traverse such a finding, applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. Therefore, it would have been readily obvious to one skilled in the art to add a lubricating oil as a finishing agent to the filaments of Radwanski in order to facilitate processing of said filaments. Hence, claims 12 and 29 are rejected.



***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

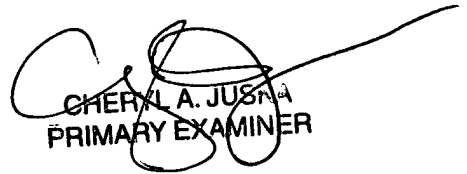
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
January 9, 2006